



July 12, 2021

Via Electronic Submission

Ann E. Misback, Secretary of the Board
Board of Governors of the Federal Reserve System

Attention: Docket No. OP-1747

Board of Governors of the Federal Reserve System
20th Street and Constitution Avenue, NW
Washington, DC 20551

RE: *Request for Comments, Proposed Guidelines for Evaluating Accounts and Services Requests*
Docket No. OP-1747

Dear Ms. Misback,

On behalf of Cross River Bank¹ ("Cross River" or "the Bank"), I thank you for the opportunity to provide comments on the Board of Governors of the Federal Reserve System's ("FRB") request for comments on proposed guidelines for evaluating accounts and services requests. Cross River applauds the FRB's efforts to create a set of guidelines that promote the principles of safety and soundness alongside responsible innovation. The FRB correctly states that a set of unambiguous guidelines will provide a transparent and consistent framework to establish standards for all access requests moving forward with a clear focus to widen access to financial services to underserved communities while maintaining the security and trust that is the hallmark of our current banking system.

Cross River firmly believes that as the financial services landscape and ecosystem continue to evolve so must the regulatory framework guiding the industry. Targeted and thoughtful regulation, as opposed to over regulation is a key component to fostering innovation throughout the industry. Establishing a robust set of principles that governs account access will help to mitigate and manage any potential risks through the industry's digital transformation. The

¹ Cross River is a New Jersey State chartered, FDIC insured financial institution that merges the trust and reliability of a community bank with the innovative offerings of a technology company. Since inception, the Bank has consistently partnered with leading technology companies to offer a suite of products that empower consumers to take control of their financial health by facilitating access to affordable credit in a responsible manner.

evolution of these controls has proven successful in helping to protect the integrity of the financial system while promoting responsible innovation that allows the industry to progress forward and offer modern solutions. Further, a clear set of principles will achieve the FRB's goal of creating consistent outcomes and ensure equitable treatment and access for institutions when applying for access accounts. It is critical that in considering these principles, the FRB does not create an overly burdensome set of arbitrary or duplicative requirements for financial institutions, but ensure requirements actually assist in protecting the integrity and security of the financial system.

The FRB acknowledged that there has been an increase in novel institutions requests for access to accounts and services and further discusses the discretion of the FRB to issue such accounts, even if the requests are coming from legally eligible institutions. Financial institutions, whether nationally or state chartered, possess the requisite and appropriate risk management, cybersecurity, and capitalization protocols to safeguard access to the financial system. These specific institutions are a trusted resource, with oversight from both federal and state regulators, protecting the integrity and resiliency of the financial system and are apt at managing third party risk through existing guidance, whether those third parties be vendors or fintech partners.

Those protocols are not simply attested to, they are audited and enforced so that any member of the banking system can be a consistent arbiter of trust. While novel problems often require novel solutions, consistent, externally validated risk and compliance boundaries ensure that every solution is bounded by the established rules that underwrite trust in the banking system. It is critical that the FRB continue to rely on the robust regulatory procedures and oversight built into the structures of chartered financial institutions as the Agency considers' establishing principles. These protocols are integral in protecting the integrity and security of the financial sector as the industry continues to undergo a dramatic digital transformation.

The FRB understands the core competencies of regulated and chartered financial institutions and strikes a necessary balance between safety and innovation in this proposal. In considering the application of institutions for accounts and services, the FRB should continue to consider the potential risks posed to the integrity and security of the system as a whole and clearly articulate the necessity for strong oversight and robust compliance protocols in order to receive access.

Any legally eligible institution that seeks to apply should be required to have the appropriate regulatory framework and compliance controls, meeting a certain minimum threshold, in order to safely and responsibly embrace innovation. While external auditors provide one avenue for non-regulated institutions to demonstrate and validate a control infrastructure, there is no like-for-like standard for safety and soundness. Similarly, GAAP defines a framework for an institutions financial reporting, but there is no single, consistent all-encompassing financial institution framework outside of the reviews by regulators. Minimum thresholds would help to appropriately tailor risk profiles of legally eligible applicants in this regard and provide financial institutions with more clarity in structuring certain frameworks, including third-party risk management. This approach is consistent with the FRB's goals of embracing and encouraging

innovation within the industry while simultaneously requiring the requisite safeguards to prevent harm to the financial services system as a whole.

The FRB should continue to rely on the core competencies of chartered financial institutions in establishing minimum thresholds to promote innovation while mitigating any potential risk. It is vital that in granting access to accounts and services institutions have the appropriate, heightened, and robust systems and procedures in place that prevent adverse impacts. Chartered financial institutions remain the best gatekeepers in protecting the integrity and security of the financial system, which has been demonstrated internationally. Financial institutions regulatory and risk management models, especially in areas of third party oversight of partners, continue to be a successful path in mitigating unwarranted risks to the system while simultaneously fostering responsible innovation and protecting consumers.

Cross River believes the intentions of the FRB's proposed principles are well conceived with the goal of creating consistency and equitable outcomes amongst applicants for accounts and services while not stifling innovation. Several aspects of the proposal may need to be further evaluated to provide further clarity and practicability in the implement of these principles. Please see below Cross River's response to the proposal's questions for comment.

Questions for Comment

Question 1: Do the proposed account access guidelines address all the risks that would be relevant to the Federal Reserve's policy goals?

The FRB's proposed guidelines cover a broad and thoughtful landscape of factors that adequately address most risks relevant to the agency's policy goals. Specifically, the FRB has identified the following policy goals in proposing this set of principles: (1) ensuring the safety and soundness of the banking system, (2) effectively implementing monetary policy, (3) promoting financial stability, (4) protecting consumers, and (5) promoting a safe, efficient, inclusive, and innovative payment system.² Transparency and consistency in the application of determining eligibility for account access and services will appropriately help to achieve the FRB's established goals.

The proposal clearly and explicitly states that, "the account access guidelines apply to requests from all institutions that are legally eligible to receive an account or services, as discussed in more detail in the first principle."³ The first principle, which details the legal eligibility criteria for financial institutions is an important factor in ensuring and promoting safety and soundness, financial stability, and consumer protection. Chartered financial institutions of this caliber inherently have the requisite, robust compliance, oversight, and risk management tools that are essential in protecting the financial system.

² See 86 FR 25866.

³ See 86 FR 25867.

These financial institutions leverage that regulatory expertise to partner or work with a variety of fintech firms that help drive responsible innovation through the industry. Importantly, these financial institutions are subject to multiple layers of independent oversight with pre-determined control frameworks that generate objective criteria to regularly evaluate an institutions performance relative to its peers, the broader industry, and historical metrics. A bank's call report is one of many tools that are both publicly available, audited, and expose a wide amount of information in a common, comparable format. The third-party risk management, due diligence, and oversight by required by banks ensures the proper vetting to remove any potential risks or harms while brining modern, best in class products and solutions forward so that consumers can benefit from an innovative payment system in a safe way. It is critical that as the FRB examine future applications, the agency examines the regulatory structure and compliance framework put in place by the applicant. In addition to the proposed principles, the regulatory requirements for applicants should be similar, if not identical, including concepts of regulatory consequences such as MRA / MRU, business line approvals, and standardized, public reporting, to ensure the appropriate safeguards are in place to protect the financial system.

While many of the established principles provide a degree of flexibility and avoid being overly prescriptive in order to account for the various complexities in size and business models of applicants, the FRB should consider establishing a minimum threshold for these requirements moving forward. Such a threshold will provide additional certainties and clarities of absolute minimum requirements to gain access to the system and give future applicants the ability to appropriately plan as the ecosystem continues to evolve. Furthermore, these minimums should be approved by bank supervisory agencies with external reviews.

Question 2: Does the level of specificity in each principle provide sufficient clarity and transparency about how the Reserve Banks will evaluate requests?

While the level of specificity in most principles provides sufficient clarity and transparency on how applicants will be evaluated, the FRB should consider the practical nature and implementation of adopting some aspects of certain principles. Certain aspects of the principles may be difficult to quantify for the purposes of evaluations or create unnecessary burdens for applicants. The principles should appropriately balance clear guidelines with flexible approach to avoid being overly prescriptive. The FRB should ensure the application of the standards provide a degree of flexibility to account for the complex nature in business model and risk profile across the spectrum of financial institutions and continued evolutions through the industry.

For example, principle 2c requires the Reserve Bank to confirm that the institution "is in substantial compliance with its supervisory agency's regulatory and supervisory requirements."⁴ Cross River fully supports the sentiment that non-compliant applicants posing risk to the financial system should not be granted access to the system. However, the word "substantial" creates a degree of ambiguity in how these principles will be quantified and what factors will be examined

⁴ See 86 FR 25868.

in the process. Cross River recommends this principle be more fully flushed out and a holistic approach be taken in evaluating applicants under this standard. Under this standard the context, nature, and effort to rectify potential regulatory non-compliance in order to avoid repetitive violations should all be accounted for. More robustly defining “substantial” and identifying key factors within this determination will help to resolve any unintended confusion related to the expectations and requirements of this principle. It is crucial that the principles do not create ambiguity in expectations or the factors that may be taken into account when evaluating an institution’s application for access to accounts and services.

Further, some principles may require additional regulatory collaboration and coordination between the FRB and applicants’ primary regulator to gain insights into factors that may be traditionally outside of the purview of the FRB’s oversight. Cross River encourages open lines of communication and active coordination between regulators to reduce duplicative, burdensome reporting requirements that ultimately do not further efforts to achieve the policy goals of responsible innovation. Requiring applicants to reproduce documents or evaluations will only serve as an inefficient resource draining barrier, costing institutions both time and capital that can be more effectively used to innovate.

Question 3: Do the proposed account access guidelines support responsible financial innovation?

Many of the principles and proceeding subsections are consistent with the goal of promoting an environment of responsible financial innovation. A number of these principles strike the appropriate balance, providing necessary flexibilities to establish procedures that make sense depending on individual institution’s own facts and circumstances without being overly prescriptive. These flexibilities are essential in creating an environment for institutions to innovate, collaborate and create in a safe and responsible manner.

Specifically, provisions in principles 2, 3 and 4 all provide necessary flexibilities in the establishment of risk management procedures and other essential governance frameworks that account for the complexities between institutions of different sizes and risk profiles. As written, the principles allow financial institutions applying for accounts and services to tailor a range of rules and procedurals while appropriately accounting for the institution’s business model, size, cyber security vulnerabilities and other risk factors. Flexibility in this capacity will promote the ability for institutions of all sizes to responsibly innovate and ensure fair and consistent application of the principles and decision-making surrounding account and services access.

A one size fits all approach would be inappropriate given the discrepancies and stark contrast in risk profiles between institutions of all different sizes and business models. A single common denominator for certain requirements, such as capital levels or governance protocols, may be inappropriate given the complex size, business model and risk profile of applicants. Smaller institutions may be unintentionally and disproportionately affected by a common denominator,

forcing them to develop or invest resources into unnecessary procedures given the makeup of their risk profile and business models.

Flexibility as opposed to precise prescription is the necessary approach to foster responsible innovation as opposed to stifling it. Further, the clarity provided in these principles clearly establish methods for financial institutions to continue to either build modern solutions on their own or collaborate and partner with fintechs to drive forward innovation throughout the industry without fear of creating competitive disadvantages. The principles allow financial institutions, with robust regulatory and compliance frameworks, to bring modern solutions that benefit consumers and drive the payments ecosystem forward into the financial fold without fear of creating potential risks.

While these principles provide necessary flexibilities, as mentioned previously, it would be useful for the FRB to potentially describe minimum thresholds in certain regards for the purpose of increased transparency and consistency. Establishing a minimum threshold would not discount the need for more complex and systemically important institutions to develop the appropriate governance, AML/BSA, cybersecurity, capital and liquidity or other protocols that accurately account for their own risk profiles. The minimums should be in line with a holistic approach to risk management and involve an independent, third-party review that assesses an institution's transaction profile, risk management capabilities, and customer base.

Ensuring alignment with an institution's risk management skills and product capabilities is a moderate control to foster innovation in areas of strategic expertise and narrower the opportunity for an institution to engage in behaviors that can lead to outside risks. Providing institutions planning to apply for access with a more specific set of guidelines that will help to appropriately tailor their own protocols and procedures that will satisfy the FRB's review process would be an additional recommended control point. This clarity will continue to help drive responsible innovation and ensure applicants are internally considering and establishing all the requisite compliance protocols that protect the integrity and security of the financial system.

Conclusion

Cross River appreciates and supports the FRB's efforts to create a clear and unambiguous set of standards that protect the integrity and security of the financial system. These principles will help foster responsible innovation and ensure the proper safeguards are in place to mitigate unwarranted risks throughout the industry. Financial institutions' well-tested regulatory and compliance core competencies appropriately supplement innovative offerings to securely modernize the industry as a whole.

The FRB should continue to ensure that any legally eligible, chartered financial institution that applies for access has the necessary safeguards, oversight and robust protocols in place to avoid risks to the financial system as a whole. To create an environment and regulatory framework that proactively embraces innovation, the FRB should be conscious of the scope of new regulations

as to not unnecessarily or inappropriately overburden institutions with duplicative requirements. The regulatory framework should match the intent of the FRB in creating a responsible and safe financial system, offering modern solutions which consumers most desperately need.

Generally, the flexibilities provided in these principles are key to driving responsible innovation and ensuring a safe and modern payments ecosystem. While specifications in certain requirements may be required to create unambiguous expectations for applicants and maintain the bedrock trust that is the foundation of our financial system, the principles' goal of promoting an environment of responsible innovation is well intended. Cross River is regularly recognized for driving innovation and accessibility throughout financial services. Our collaborative relationship with the appropriate regulatory entities is key to successfully driving the implementation of these principles in a frictionless and efficient manner that is safe and responsible. Cross River fully supports agency and industry collaboration to establish these clear, transparent, and thoughtful principles in order to promote innovation.

If you have any additional questions, please do not hesitate to contact agelbard@crossriverbank.com or 201-808-7189. We look forward to continuing engaging in dialogue and serving as a resource for the Agency in the future.

Best,

A handwritten signature in black ink, appearing to read "Aaron B. Iovine". The signature is fluid and cursive, with a long horizontal stroke at the end.

Aaron Iovine, Esq.
Head of Policy and Regulatory Affairs